

**Letter of Findings: 01-20150656
Individual Income Tax
For the Year 2011**

NOTICE: IC § 6-8.1-3-3.5 and IC § 4-22-7-7 require the publication of this document in the Indiana Register. This document provides the general public with information about the Department's official position concerning a specific set of facts and issues. This document is effective on its date of publication and remains in effect until the date it is superseded or deleted by the publication of another document in the Indiana Register. The "Holding" section of this document is provided for the convenience of the reader and is not part of the analysis contained in this Letter of Findings.

HOLDING

Individual was not required to file a 2011 Indiana income tax return because the documentation provided by Individual and his Spouse was sufficient to establish that Individual was a Massachusetts resident during 2011 and that Individual had no Indiana residence prior to 2012.

I. Individual Income Tax - Indiana Residency.

Authority: IC § 6-3-2-1(a); IC § 6-3-1-12; IC § 6-8.1-5-1(c); Dept. of State Revenue v. Caterpillar, Inc., 15 N.E.3d 579 (Ind. 2014); Indiana Dep't of State Revenue v. Rent-A-Center East, Inc., 963 N.E.2d 463 (Ind. 2012); State Election Board v. Bayh, 521 N.E.2d 1313 (Ind. 1988); In the Matter of Evrard, 333 N.E.2d 765 (Ind. 1975); Board of Medical Registration and Examination v. Turner, 168 N.E.2d 193 (Ind. 1960); Croop v. Walton, 157 N.E. 275 (Ind. 1927); Culbertson v. Bd. Of Comm'rs of Floyd County, 52 Ind. 361 (1876); Yonkey v. State, 27 Ind. 236 (Ind. 1866); Wendt LLP v. Indiana Dep't of State Revenue, 977 N.E.2d 480 (Ind. Tax Ct. 2012); Scopelite v. Indiana Dep't of Local Gov't Fin., 939 N.E.2d 1138 (Ind. Tax Ct. 2010); Lafayette Square Amoco, Inc. v. Indiana Dep't of State Revenue, 867 N.E.2d 289 (Ind. Tax Ct. 2007); [45 IAC 3.1-1-22](#); [45 IAC 3.1-1-23\(2\)](#).

Taxpayer argues that he was not an Indiana resident during 2011 and was not required to file an Indiana individual income tax return for that year.

STATEMENT OF FACTS

Taxpayer is a current Indiana resident having moved to this state in late 2011. The Indiana Department of Revenue ("Department") issued Taxpayer a notice of "Proposed Assessment" of Indiana income tax for the year 2011. The assessment was dated October 2015. Taxpayer responded in a letter dated October 2015 stating that he was "not required to file a 2011 Indiana income tax return" Despite Taxpayer's October 15 letter, the Department began to undertake collection activities.

The matter was referred to the Department's Legal Division. An administrative hearing was conducted during which Taxpayer explained the basis for his protest. This Letter of Findings results.

I. Individual Income Tax - Indiana Residency.

DISCUSSION

The issue is whether Taxpayer was a 2011 resident of Indiana requiring Taxpayer to file an Indiana income tax return.

Information apparently available to the Department indicated that Taxpayer in 2012 filed his federal 2011 income tax return listing an Indiana address. In addition, the Department's records indicated that Taxpayer had obtained an Indiana driver's license effective December 31, 2011, that Taxpayer had claimed an Indiana homestead credit, and that Taxpayer's W-2 information listed an Indiana payee (employer).

All tax assessments are prima facie evidence that the Department's claim for the tax is valid, and each taxpayer bears the burden of proving that any assessment is incorrect. IC § 6-8.1-5-1(c); Indiana Dep't of State Revenue v. Rent-A-Center East, Inc., 963 N.E.2d 463, 466 (Ind. 2012); Lafayette Square Amoco, Inc. v. Indiana Dep't of State Revenue, 867 N.E.2d 289, 292 (Ind. Tax Ct. 2007). Thus, a taxpayer is required to provide documentation explaining and supporting his or her challenge that the Department's position is wrong. Poorly developed and

non-cogent arguments are subject to waiver. *Scopelite v. Indiana Dep't of Local Gov't Fin.*, 939 N.E.2d 1138, 1145 (Ind. Tax Ct. 2010); *Wendt LLP v. Indiana Dep't of State Revenue*, 977 N.E.2d 480, 486 n.9 (Ind. Tax Ct. 2012). In reviewing a taxpayer's argument, the Indiana Supreme Court has held, that when it examines a statute that an agency is "charged with enforcing . . . we defer to the agency's reasonable interpretation of [the] statute even over an equally reasonable interpretation by another party." *Dept. of State Revenue v. Caterpillar, Inc.*, 15 N.E.3d 579, 583 (Ind. 2014).

Indiana imposes an income tax on "the adjusted gross income of every resident person . . ." IC § 6-3-2-1(a). For income tax purposes, "The term 'resident' includes (a) any individual who was domiciled in this state during the taxable year, or (b) any individual who maintains a permanent place of residence in this state and spends more than one hundred eighty-three (183) days of the taxable year within this state . . ." IC § 6-3-1-12.

To establish a domicile, a taxpayer "must be physically present at a place, and must have the simultaneous intent of establishing a home at that place." [45 IAC 3.1-1-22](#). For income tax purposes, "a person has only one domicile at a given time even though that person maintains more than one residence at that time." *Id.* Additionally, "Once a domicile has been established, it remains until the conditions necessary for a change of domicile occur." *Id.* "To effect a change of domicile, there must be an abandonment of the first domicile with an intention not to return to it, and there must be a new domicile acquired by residence elsewhere with an intention of residing there permanently, or at least indefinitely." *Croop v. Walton*, 157 N.E. 275, 278 (Ind. 1927).

In *State Election Board v. Bayh*, 521 N.E.2d 1313 (Ind. 1988), the Indiana Supreme Court considered the standard by which a "domicile" is established. The court determined that Mr. Bayh met the residency requirement for the office of Governor because Mr. Bayh's domicile remained in Indiana even though he moved to different states for various reasons for many years. Specifically, the court stated, in relevant part, that:

Once acquired, domicile is presumed to continue because "every man has a residence somewhere, and . . . he does not lose the one until he has gained one in another place." Establishing a new residence or domicile terminates the former domicile. A change of domicile requires an actual moving with an intent to go to a given place and remain there. "It must be an intention coupled with acts evidencing that intention to make the new domicile a home in fact . . . [T]here must be the intention to abandon the old domicile; the intention to acquire a new one; and residence in the new place in order to accomplish a change of domicile." A person who leaves his place of residence temporarily, but with the intention of returning, has not lost his original residence.

Id. at 1317 (Internal citations omitted).

The supreme court concluded that:

Residency requires a definite intention and "evidence of acts undertaken in furtherance of the requisite intent, which makes the intent manifest and believable." A self-serving statement of intent is not sufficient to find that a new residence has been established. Intent and conduct must converge to establish a new domicile. *Id.* at 1318 (Internal citations omitted).

In an earlier case, the Indiana Supreme Court stated that in order to establish a new residence, a taxpayer "must show . . . evidence of acts undertaken in furtherance of the requisite intent, which make that intent manifest and believable." In the *Matter of Evrard*, 333 N.E.2d 765, 768 (Ind. 1975).

The Department's regulation provides that "[t]here is no one set of standards that will accurately indicate the person's intent in every relocation." [45 IAC 3.1-1-22](#). Instead, the determination is made on a case by case basis. *Id.* Relevant facts to be considered include but are not limited to:

- (1) Purchasing or renting residential property
- (2) Registering to vote
- (3) Seeking elective office
- (4) Filing a resident state income tax return or complying with the homestead laws of a state
- (5) Receiving public assistance
- (6) Titling and registering a motor vehicle
- (7) Preparing a new last will and testament which includes the state of domicile.

Id.

In addition, courts have considered a taxpayer's contemporaneous declarations identifying that taxpayer's "home;" insurance policies, mortgages, contracts or other instruments indicating the taxpayer's home; and membership in clubs, churches, or other social groups in a place. Croop, 157 N.E. at 278-79. Finally, courts have considered the location of taxpayer's household goods and mailing address. Board of Medical Registration and Examination v. Turner, 168 N.E.2d 193, 197 (Ind. 1960); See also, Culbertson v. Bd. Of Comm'rs of Floyd County, 52 Ind. 361, 362-67 (1876). However, a taxpayer "seeking to establish his claim of exemption from taxation on the ground of nonresidence is not required to show that his property was assessed elsewhere." Croop, 157 N.E. at 276.

Taxpayer - along with his Spouse - indicates that they were residents of and worked in Massachusetts during 2011. Prior to their Massachusetts residency, Taxpayer states that he lived outside of the United States and that Spouse lived in a state other than Indiana.

To that end, Taxpayer has provided documentation which purportedly supports his position. In small part, a summary of that documentation includes:

- a letter dated February 7, 2011, sent to a Massachusetts address reappointing Spouse as a postdoctoral fellow at a Massachusetts graduate school;
- a letter dated December 1, 2011, sent to a Massachusetts address appointing Spouse as a medical researcher at an Indiana university;
- a letter dated September 2, 2011, sent to a Massachusetts address appointing Taxpayer to a teaching position *[sic]* at an Indiana university effective January 1, 2012;
- Spouse and Taxpayer's 2011 bank and credit union statements indicating a Massachusetts address;
- a 2011 Massachusetts bureau of motor vehicle document indicating a "change of address" from one Massachusetts address to another Massachusetts address;
- 2011 hotel registration receipts providing Taxpayer's then current Massachusetts address;
- a copy of a check written by Taxpayer, dated March 2011 indicating Taxpayer's then current, pre-printed Massachusetts address;
- letters dated January 2011 containing applications for a teaching position outside Indiana and indicating a then current Massachusetts address;
- Taxpayer's resume indicating his then current Massachusetts address and indicating his previous, non-Indiana addresses outside Indiana and outside the United States;
- Taxpayer's Massachusetts utility company bills dated 2011 containing a Massachusetts address;
- Taxpayer's credit card bills dated 2011 containing a Massachusetts address;
- Taxpayer's 401(k) investment plan statements dated 2011 containing a Massachusetts address;
- 2010 and 2011 joint Massachusetts tax returns containing Taxpayer's Massachusetts address;
- printed acknowledgements from the Massachusetts Department of Revenue confirming receipt of Taxpayer's Massachusetts tax returns.

In addition to the documents listed above, Taxpayer and Spouse have provided numerous similar, credible documents each of which would tend to show that Taxpayer established and maintained a 2011 Massachusetts residence.

As to the Department's initial contention that Taxpayer claimed an Indiana homestead exemption, publicly available information establishes that Taxpayer did not move to Indiana until late 2011, early 2012 and did purchase an Indiana home until October 2013.

As required by IC § 6-8.1-5-1(c), Taxpayer has provided credible documentation sufficient to establish that Taxpayer was a Massachusetts resident during 2011 and that Taxpayer had no Indiana residence prior to 2011.

Taxpayer has filed Indiana tax returns for 2012, 2013, and 2014 but the evidence leads to the conclusion that Taxpayer was not required to file a 2011 Indiana return.

FINDING

Taxpayer's protest is sustained.

Posted: 05/25/2016 by Legislative Services Agency

An [html](#) version of this document.